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CONFIDENTIAL

Lana sent Paul Berg to me because he had raised the research tool issue in the context of a cloning discussion. I asked, and obtained, his permission to discuss this with you confidentially. He would have written you an e-mail himself, but thought I could give you the background and he would follow with a phone call.

He recounted that, in a conversation with Kathy Koo (the TT head at Stanford) she had asked his opinion about making a public pronouncement that Stanford would no longer require MTAs for the material they sent out, unless absolutely necessary. He was delighted. I think I dampened his mood when I said I was not surprised given the bad press Stanford had received on TT, he had not been aware of this.

He has written a short policy statement that embodies this new philosophy. He needs Don Kennedy's OK, but once/if he receives this he will send it to me. Further, he has mentioned this to Phil Sharpe and intends to talk to others (Harvard, M. Bishop, D. Baltimore, etc.) to see if they would sign on to such a policy. So far people have been receptive. He wants to create a momentum that would encourage (or embarrass) others to sign on.

He was concerned that this move not be seen to pre-empt or embarrass Becky's WG, you or the NIH. I told him that I thought the policy was great and that we could coordinate both efforts so it would be seen as a win-win. I noted that I expected Becky's report to be more conservative than this proposal. That the WG would provide guidance on what could be done given IP constraints. But, I also pointed out that there would be no need for embarrassment if his statement was prefaced with an acknowledgement that this move was prompted by your leadership in establishing the WG and that it was meant to support and enhance the WG's breadth of options. He thought that would work. He wanted his statement to be public on June 1, I noted that the ACD was to meet on June 4, so that we needed to be careful with timing.

I told him that my personal opinion was that this was a great idea. However, I cautioned we could not expect that companies would buy into the same modus operandi, thus creating a large disparity between in-coming and out-going materials. He agreed. I told him that you personally felt very strongly that these agreements were anathema to science and that I expected you would embrace such a move. I cautioned, however, that as NIH, we could not mandate this from universities given Bayh-Dole.

Frankly, I love it. I love it because it is coming from the scientists. Us TT people have been trying to work within the system and with its constraints, getting caught between the scientists, the companies and the law. Being liberated from a key constraint would be marvelous. However, I also think this is very naïve - the devil is in the details. It would be great if NIH could do the same. I have to talk to Bob Lanman to see if we can even do this - our legal authorities may not allow us to 'give away' government property. I told Dr. Berg this, and referred him to the Boston Globe articles and the NBC piece as an illustration of position vis-à-vis perceived 'corporate welfare.' If Bob says this is OK, I would love to get the buy-in from the IC Directors, the SDs and the scientists.

Dr. Berg has asked that I not share this information with Becky just yet. He needs some more time to get additional support. I am sure he would be delighted to talk to you about this.

Regards, Maria